IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR. JUSTICE J.CHELAMESWAR

And

THE HON'BLE MR. JUSTICE D.APPA RAO

WRIT PETITION NO. 16113 OF 2006

Between:
M/s. BOC India Limited
51-1-1, Nakkavanipalem,
P& T Colony, Visakhapatnam,
Rep. by its Manager – Financial Services
Mr. CK Rao

Petitioner

AND

The Commercial Tax Officer,
Dwarkanagar, Visakhapatnam and others

Respondents

Dated: 30th August, 2006

ORAL ORDER:
(Per the Hon'ble Sri Justice J.Chelameswar)

The petitioner is a Limited company registered on

the rolls of the first respondent under the Andhra Pradesh Value Added Tax Act, 2005 (for brevity the Act), carrying on business of manufacturing and trading in industrial gases such as *medical oxygen* and *nitrous oxide*.

The petitioner, it appears, filed an application before the Advance Ruling Authority under Sec. 67 of the Act seeking clarification with reference to the *Head of Schedule in* the Act, under which *medical oxygen* and *nitrous oxide* are liable to be taxed. The said Authority issued clarification dated 18.7.2005. No satisfied with the said clarification, the petitioner carried the matter in appeal before Sales Tax Appellate Tribunal, which is said to be pending in TA No. 213 of 2005.

In view of the clarification given by the Advance Ruling Authority, the first respondent on 3.10.2005, issued notice proposing to assess provisional tax for the period between July, 2005 to August, 2005 on the above mentioned items.

The petitioner responded to the said notice and asserted that in view of the pendency of the appeal, the said clarification cannot be relied upon by the Assessing Authority in view of the specific provision of Sec. 67(4) ([1]) of the Act. However, the first respondent passed provisional assessment order dated 12.12.2005 and also

imposed penalty and called upon the petitioner to pay interest on the delayed payment of tax, so determined.

Aggrieved by the order of the first respondent, the petitioner carried the matter in appeal before the second respondent. Along with the appeal, the petitioner filed an application seeking stay of recovery of the amount of tax, penalty and interest. By order dated 6.2.2006, the second respondent rejected such stay application. The petitioner carried the matter further in revision before the third respondent, unsuccessfully, and the third respondent by order dated 8.5.2006 dismissed the revision.

In the meanwhile, the two appeals preferred by the petitioner before the second respondent, came to be dismissed by a common order dated 26.6.2006. Aggrieved by the same, the petitioner carried the matter in appeal to the Sale Tax Appellate Tribunal and the said appeals are said to be still pending.

Hence, the present writ petition with the following prayer:

> *"…to issue a Writ of Certiorari or any other appropriate writ or order or direction quashing the order of the 3rd respondent in CCT's Ref. No.LV(3)/641 & 656/2006 dated 8.5.2006 as illegal and contrary to law and restrain the 1st respondent from collecting the disputed tax from the petitioners till the disposal of the appeal before the 2nd respondent for the tax period July, 2005 and August, 2005 and…"*

It is asserted by the learned counsel for the petitioner that the petitioner has already paid half of the tax demanded, a fact, which is not disputed by the respondent.

Heard the learned Government Pleader.

In the circumstances, we are of the opinion that the matter can be disposed of directing the respondents not to take coercive steps for recovery of the balance amount of tax, penalty and interest pending disposal of the appeals before the Sales Tax Appellate Tribunal.

J.Chelameswar, J.

D.Appa Rao, J.

August 30, 2006
MAS.

([1]) **67. Clarification and Advance Rulings:**

(1) .....
(2) .....
(3) .....
(4) The order of the authority shall be binding
  (i) on the applicant who had sought clarification;
  (ii) in respect of the goods or transaction in relation to which a clarification was sought; and
  (iii) on all the officers other than the Commissioner,
  Provided the dealer does not file an appeal before Sales Tax Appellate Tribunal within 30 days of the Ruling in the manner prescribed.